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AUTHORITY: 5 U.S.C. 5514; 26 U.S.C. 6402(d); 31 U.S.C. 3701–3720A.

SOURCE: 64 FR 34969, June 30, 1999, unless otherwise noted. Redesignated at 65 FR 81328, Dec. 26, 2000.

Subpart A—General

§ 1704.1 Authority and scope.

(a) *Authority.* The Office of Federal Housing Enterprise Oversight (OFHEO) issues this part 1704 under the authority of 5 U.S.C. 5514 and 31 U.S.C. 3701–3720A, and in conformity with the FCCS at 4 CFR chapter II; the regulations on salary offset issued by the Office of Personnel Management at 5 CFR part 550, subpart K; and the regulations on tax refund offset issued by the Internal Revenue Service at 26 CFR 301.6402–6.

(b) *Scope.* (1) This part 1704 applies to debts that are owed to the Federal Government by Federal employees, other persons, organizations, or entities that are indebted to OFHEO, and by Federal employees of OFHEO who are indebted to other agencies, except for those debts listed in paragraph (b)(2) of this section.

(2) Subparts B and C of this part 1704 do not apply to:

(i) Debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 *et*

seq.) or the tariff laws of the United States;

(ii) Any case to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies;

(iii) Any case where collection of a debt is explicitly provided for or provided by another statute, *e.g.* travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108, or, as provided for by title 11 of the United States Code, when the claims involve bankruptcy;

(iv) Any debt based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, unless the Department of Justice authorizes OFHEO to handle the collection;

(v) Claims between agencies; or

(vi) A claim that has been outstanding for more than 10 years after the creditor agency's right to collect the debt first accrued, unless facts material to the Federal Government's right to collect were not known and could not reasonably have been known by the officials charged with the responsibility for discovery and collection of such debts.

(3) Nothing in this part 1704 precludes the compromise, suspension, or termination of collection actions, where appropriate under the FCCS, or the use of alternative dispute resolution methods if they are not inconsistent with applicable law and regulations.

(4) Nothing in this part 1704 precludes an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or from questioning the amount or validity of a debt, in the manner set forth in this part 1704.

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§ 1704.2 Definitions.

The following definitions apply to the terms used in this part 1704, unless the term is defined elsewhere in this part 1704.

(a) *Administrative offset* means an action, pursuant to 31 U.S.C. 3716, in which the Federal Government withholds funds payable to, or held by the

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Federal Government for a person, organization, or other entity in order to collect a debt from that person, organization, or other entity. Such funds include funds payable by the Federal Government on behalf of a State Government.

(b) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

(c) *Claim* or *debt* (used interchangeably in this part 1704) means any amount of funds or property that has been determined by an agency official to be due the Federal Government by a person, organization, or entity, except another agency. It also means any amount of money, funds, or property owed by a person to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. A claim or debt includes:

(1) Funds owed on account of loans made, insured, or guaranteed by the Federal Government, including any deficiency or any difference between the price obtained by the Federal Government in the sale of a property and the amount owed to the Federal Government on a mortgage on the property;

(2) Expenditures of non-appropriated funds;

(3) Overpayments, including payments disallowed by audits performed by the Inspector General of the agency administering the program;

(4) Any amount the Federal Government is authorized by statute to collect for the benefit of any person;

(5) The unpaid share of any non-Federal partner in a program involving a Federal payment, and a matching or cost-sharing payment by the non-Federal partner;

(6) Any fines or penalties assessed by an agency; and

(7) Other amounts of money or property owed to the Federal Government.

(d) *Certification* means a written statement received by a paying agency from a creditor agency that request the paying agency to offset the salary of an employee and specifies that required

procedural protections have been afforded the employee.

(e) *Compromise* means the settlement or forgiveness of a debt.

(f) *Creditor agency* means the agency to which the debt is owed, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt.

(g) *Debt*. See *Claim* or *debt* in paragraph (c) of this section.

(h) *Debt collection center* means the Department of the Treasury or any other agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(i) *Debtor* means the person, organization, or entity owing money to the Federal Government.

(j) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, or retainer pay (or in the case of an employee not entitled to basic pay, other authorized pay) remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that OFHEO must apply first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in 5 CFR 581.105 (b) through (f), as follows:

(1) Federal employment taxes;

(2) Amounts withheld for the United States Soldiers' and Airmen's Home;

(3) Amounts deducted for Medicare;

(4) Fines and forfeiture ordered by a court-martial or by a commanding officer;

(5) Federal, State, or local income taxes to the extent authorized or required by law, but no greater than would be the case if the employee claimed all dependents to which her or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(6) Health insurance premiums;

(7) Normal retirement contributions, including employee contributions to the Thrift Savings Plan; and

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(8) Normal life insurance premiums, *e.g.*, Serviceman's Group Life Insurance and "Basic Life"; Federal Employee's Group Life Insurance premiums, not including amounts deducted for supplementary coverage.

(k) *Employee* means a current employee of OFHEO or other agency, including a current member of the Armed Forces or a Reserve of the Armed Forces of the United States.

(l) *FCCS* means the Federal Claims Collection Standards at 4 CFR chapter II.

(m) *Hearing official* means an individual who is responsible for conducting any hearing with respect to the existence or amount of a debt claimed and for rendering a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Director of OFHEO when OFHEO is the creditor agency but may be an administrative law judge.

(n) *Notice of Intent* means a written notice of a creditor agency to a debtor that states that the debtor owes a debt to the creditor agency and apprises the debtor of the applicable procedural rights.

(o) *Notice of salary offset* means a written notice from the paying agency to an employee after a certification has been issued by a creditor agency that informs the employee that salary offset will begin at the next officially established pay interval.

(p) *Paying agency* means an agency of the Federal Government that employs the individual who owes a debt to an agency of the Federal Government.

(q) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deductions at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(r) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to OFHEO or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

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§ 1704.3 Collection of debts and referrals to the Department of the Treasury.

(a) *Collection activity.* The collection of debts directly and by offset shall be pursued in accordance with this part 1704. This part 1704 incorporates all applicable debt collection provisions of the FCCS and supplements the FCCS by the prescription of procedures necessary and appropriate for the operations of OFHEO.

(b) *Referral of delinquent debts.* (1) OFHEO shall transfer to the Secretary of the Department of the Treasury any past due, legally enforceable nontax debt that has been delinquent for a period of 180 days or more so that the Secretary may take appropriate action to collect the debt or terminate collection action in accordance with 31 U.S.C. 3716, 5 U.S.C. 5514, the FCCS, 5 CFR 550.1108, and 31 CFR part 285.

(2) OFHEO may transfer any past due, legally enforceable nontax debt that has been delinquent for less than a period of 180 days to a debt collection center for collection in accordance with 31 U.S.C. 3716, 5 U.S.C. 5514, 5 CFR 550.1108, 31 CFR part 285, and the FCCS.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§§ 1704.4–1704.19 [Reserved]

Subpart B—Salary Offset

§ 1704.20 Authority and scope.

(a) *Authority.* OFHEO may collect debts owed by employees to the Federal Government by means of salary offset under the authority of 5 U.S.C. 5514, 5 CFR part 550, subpart K, and this subpart B.

(b) *Scope.* (1) The procedures set forth in this subpart B apply to situations where OFHEO is attempting to collect a debt by salary offset that is owed to it by an individual employed by OFHEO or by another agency; or where OFHEO employs an individual who owes a debt to another agency.

(2) The procedures set forth in this subpart B do not apply to:

(i) Any routine intra-agency adjustment of pay that is attributable to clerical or administrative error or delay in processing pay documents that